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Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, 2nd Floor
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Proposed Rulemaking (NPRM) on spectrum auction, FCC 93-455.

Dear Mr Caton:

The Taxpayer Assets Project is pleased to offer comments on the Notice of Proposed Rulemaking (NPRM) on spectrum auctions, FCC 93-455. We will address three points.

1. Competition and diversity will be enhanced through restrictions on cross ownership. Telephone, cable and cellular companies should not be able to acquire PCS licenses in their own service areas.

The FCC can best promote competition in telecommunications markets by adopting rules which prohibit incumbent telephone, cable and cellular companies from obtaining licenses to operate PCS services in their own service areas. The FCC's proposal to allow existing cellular license holders to acquire an additional 10 MHz of spectrum, and to allow telephone and cable companies to acquire up to 40 megahertz of spectrum, could result in cases where the four incumbent telecommunications carriers in a given market obtain 100 megahertz of the available 120 MHz of new PCS spectrum.

Federal policy makers, including Congress and the Executive branch, claim that competition will protect consumers from excessive carrier rates. The new PCS wireless services are supposed to be an important element of a new competitive carrier market. Competition can hardly be enhanced if incumbent telephone, cable and cellular companies can "own" most of the new PCS spectrum. The recent decision by PACTEL to divest its cellular licenses in order to allow the company to acquire a full 40 MHz of PCS spectrum is a case in point. In markets served by PACTEL, incumbent telephone, cable and cellular companies will be allowed to acquire 100 MHz of the 120 MHz of PCS spectrum which is to be auctioned. Under what economic theory can this possibility promote

"competition?" Clearly there would be more competition if all PCS license holders were new entrants in the service area.

In our judgement, the issue of cross-ownership restrictions and competition is so obvious, the only mystery is why will the FCC allow cross ownership. What possible rationale can the FCC offer other than the fact that telecommunications carriers appear to wield more political influence than do consumers?

2. Aggregation of PCS licenses into larger blocks should only be allowed after a finding by the FCC that such aggregation is in the public interest.

The FCC is proposing to issue 7 PCS licenses per market, but also to allow bidders to aggregate licenses together into larger blocks. The only restrictions on the aggregation are the proposed limit of 40 MHz of licenses per firm. In our previous comments on this issue we urged the FCC to auction off PCS spectrum in the smallest possible blocks, and then allow aggregation, contingent upon an FCC finding that the aggregation was in the public interest. The potential benefits of aggregation, which may include the ability to provide some broadband services which cannot be offered via smaller blocks, must be weighted against the costs of aggregation, which will include less competition and less diversity. The FCC doesn't yet know if the smaller PCS blocks can adequately serve PCS users, and it would be wise to allow a certain amount of experimentation before it concludes that the smaller PCS blocks can be aggregated into larger, but fewer licenses.

3. The FCC should allow some bidders on PCS spectrum to offer royalties or profit shares as an alternative to upfront cash payments.

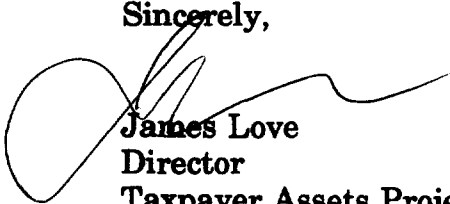
Upfront cash payments for PCS spectrum offer a number of appealing advantages, including the simplicity of the auction mechanism, and the fact that the lump sum cost of the licenses will not involve marginal costs per unit of service offered, arguably leading to more efficient consumer prices. On the other hand, upfront cash payments create entry barriers, and will lead to less competition in the auction, and we believe, a lower present value to the public for license fees, due to the differences between the bidders discount rates (the costs of obtaining capital) and the government's discount rate (the government's costs of obtaining revenue through the issuance of government bonds).

At a minimum, the FCC should require that one Block C and one Block D license in each market be auctioned on the basis of the highest royalty or profit share. To accomplish this, we suggest that the FCC offer these blocks after the initial licenses are auctioned, and that the license holders be required to pay upfront fees

which are equal to one third or one half the winning bids of the licenses sold for cash. That is, the second round of licenses should be awarded to the firms which agree to pay a fixed upfront fee, while "bidding" on the government's contingent share of the PCS revenues.

Thank you for the opportunity to provide comments on this issue.

Sincerely,



James Love
Director
Taxpayer Assets Project

Appendix

The Taxpayer Assets Project (TAP) is a non-profit citizens organization which was started by Ralph Nader to monitor the management and sale of government property. In the past we have investigated extensively the government's management of information resources, intellectual property rights from government funded R&D, and the sale of publicly owned mineral and timber resources. Our interest in the Federal Communication Commission's (FCC) proposed rules for PCS spectrum allocation are part of a TAP initiative to investigate spectrum allocation and the new rules for the nation's telecommunications infrastructure.